



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 28, 2004

Ms. Karen L. Johnson  
Powell & Leon, L.L.P.  
1706 West Sixth Street  
Austin, Texas 78703-4703

OR2004-9205

Dear Ms. Johnson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 215084.

The Grape Creek Independent School District (the "district"), which you represent, received a request for any district records and communications concerning the requestor's client, who is a freshman at Grape Creek High School. You state that the district has provided most of the requested information to the requestor. You claim, however, that the remaining requested information is excepted from disclosure under sections 552.026, 552.101, 552.102, 552.111, and 552.114 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

The submitted information comes within the scope of the Family Educational Rights and Privacy Act of 1974 ("FERPA"). *See* 20 U.S.C. § 1232g. FERPA is incorporated into chapter 552 of the Government Code under section 552.026. *See* Open Records Decision No. 634 at 6-8 (1995). Section 552.026 of the Government Code provides that chapter 552

does not require the release of information contained in education records of an educational agency or institution, except in conformity with the Family Educational Rights and Privacy Act of 1974, Sec. 513, Pub. L. No. 93-380, 20 U.S.C. Sec. 1232g.

Gov't Code § 552.026. FERPA provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally

identifiable information, other than directory information, contained in a student's education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student's parent. *See* 20 U.S.C. § 1232g(b)(1); *see also* 34 C.F.R. § 99.3 (defining personally identifiable information). Under FERPA, "education records" are those records that contain information directly related to a student and that are maintained by an educational agency or institution or by a person acting for such agency or institution. *See* 20 U.S.C. § 1232g(a)(4)(A).

We conclude that all of the submitted information consists of education records that are subject to FERPA and may only be released in accordance with federal law. We note, however, that although the district must withhold student-identifying information pursuant to FERPA, federal law requires that the records be made available to a student's parent or representative to the extent that the records pertain to that student. *See* 20 U.S.C. § 1232g(a)(1)(A) (granting parents an affirmative right of access to their child's education records). In this instance, the requestor is the attorney for the student to whom most of the submitted information pertains. Accordingly, the requestor has a right of access to this student's information, and it may not be withheld pursuant to an exception to disclosure under the Public Information Act (the "Act"). *See Equal Employment Opportunity Comm'n v. City of Orange, Texas*, 905 F. Supp 381, 382 (E.D. Tex. 1995) (federal law prevails over inconsistent provision of state law); *see also* Open Records No. 431 (1985) (information subject to right of access under FERPA may not be withheld pursuant to statutory predecessor to section 552.103). Thus, the information that relates to this student may not be withheld from the requestor under sections 552.101, 552.102, or 552.111 of the Government Code. Consequently, we conclude that the district must release this student's records to the requestor upon receipt of a proper written consent as required by section 1232g(b)(2). To the extent these records contain personally identifiable information of other students, such information must be withheld under FERPA.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Lauren E. Kleine  
Assistant Attorney General  
Open Records Division

LEK/jev

Ref: ID# 215084

Enc. Submitted documents

c: Ms. Susan Feller Heiligenthal  
Attorney at Law  
6805 Cypress Point North  
Austin, Texas 78746  
(w/o enclosures)